

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

DOCKET NO. 020896-WS
ORDER NO. PSC-03-0325-FOF-WS
ISSUED: March 6, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY

ORDER DENYING REQUESTS FOR RECONSIDERATION

BY THE COMMISSION:

Aloha Utilities, Inc. (Aloha or Utilities) is a Class A water and wastewater utility in Pasco County. The utility consists of two distinct service areas: Aloha Gardens and Seven Springs. The utility's service area is located within the Northern Tampa Bay Water Use Caution Area as designated by the Southwest Florida Water Management District (SWFWMD). Critical water supply concerns have been identified by SWFWMD in this area.

On August 10, 2001, Aloha filed an application for an increase in rates for its Seven Springs water system. A hearing on this application was subsequently held in Pasco County on January 9 through 11, 2002, and we issued our Final Order No. PSC-02-0593-FOF-WU (Final Order) on April 30, 2002. This Order is now on appeal before the First District Court of Appeal. Portions of the Final Order are stayed pursuant to Order No. PSC-02-1056-PCO-WU, issued August 5, 2002.

On July 18, 2002, we received a letter dated July 16, 2002, from V. Abraham Kurien, M.D. (Dr. Kurien), a customer of Aloha, which was accompanied by a petition (Customers' Petition) that had been signed by 1,491 residents from 1,314 households located in a

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portion of the Seven Springs Service Area of Aloha. This docket was established in order to consider the issues raised in the petition. The Office of Public Counsel (OPC) and Mr. Edward O. Wood have intervened in this docket.

Aloha moved to dismiss the petition, to which OPC and Dr. Kurien responded. On November 19, 2002, at our regular Agenda Conference, we unanimously voted to hold the Customers' petition, along with Aloha's Motion to Dismiss, Request for Oral Argument, and the Responses filed thereto in abeyance until the First DCA has rendered an opinion on Aloha's appeal of the Final Order. Further, we included in our vote a directive to our staff to file a Motion to Expedite Aloha's Appeal before the First DCA. Order No. PSC-02-1722-PCO-WS was subsequently issued on December 9, 2003, memorializing our decision at the November 19, 2002 Agenda Conference.

On December 18, 2002, we received a letter from Mr. Wood requesting reconsideration of Order No. PSC-02-1722-PCO-WS, and on December 20, 2003, we received a letter from Dr. Kurien, also requesting reconsideration of the same order. On January 9, 2003, Aloha filed its Response in Opposition to Requested Reconsideration. As set forth below, these requests for reconsideration are denied.

Request for Reconsideration by Mr. Wood

Mr. Wood argues that he is seeking reconsideration of Order No. PSC-02-1722-WS because he does not think the Order contains all that we agreed to at the November 19, 2002, Agenda Conference. Specifically, Mr. Wood states:

The Commission agreed to hold the Docket in abeyance. However there were things that the Commission agreed to do that are not in the Order.

- 1) Aloha Utilities and the Office of Public Counsel were told to petition the District Court to expedite the hearing of the appeal to Docket No. 010503-WU.
- 2) The Commission agreed that an independent audit of Aloha's processing and methodology should be under taken.

Its purpose to determine the level of hydrogen sulfide present in Aloha water, does the Aloha process remove these elements all the time, and is there an excess of chlorine at times and insufficient at other times depending on demand. This is to be unannounced audit over a period of time.

Mr. Wood further states in his letter that OPC had accepted the responsibility to finance such a study of Aloha's process, and further, that it was:

[r]ecommended and accepted that the parties doing the study would be from one of the major Florida Universities. A person from the University of South Florida was recommended by Dr. A. Kurien. The OPC has been put in touch with this person. If this person was not acceptable then the OPC would look at other universities.

According to Mr. Wood, none of the above that was agreed to by the Commission was included in Order No. PSC-02-1722-PCO-WS.

Dr. Kurien's Request for Reconsideration

Dr. Kurien's letter requesting reconsideration of Order No. PSC-02-1722-PCO-WS was received on December 23, 2002. In his letter, Dr. Kurien states:

I would like to request a reconsideration of this order so as to include a description of the nature of the discussions that took place at the hearing on November 19, 2002 with reference to Docket No. 020896-WS. Specifically I would like included in the order the discussion about an independent scientific audit of Aloha Utilities' processing methodologies and physical facilities requested by me and the permission given by the PSC for the Office of Public Counsel to finance and undertake such an audit by the University of South Florida.

Aloha's Response in Opposition to Requested Reconsideration

In its response to the motions for reconsideration, Aloha states that the requests clearly do not properly seek reconsideration of Order No. PSC-02-1722-PCO-WS. Aloha states that the motions merely seek to complain about the content of the Order rather than to identify a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order. Aloha further states that the Order accurately reflects the determination of the Commission and should not be reconsidered.

Analysis

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that we failed to consider in rendering its Order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

As stated previously, the subject of the motions for reconsideration, Order No. PSC-02-1722-PCO-WS, memorializes the action we took at our November 19, 2002 Agenda Conference. Specifically, we ordered that this docket be held in abeyance until resolution of Aloha's appeal by the First DCA, and also ordered our staff to file a Motion to Expedite Aloha's appeal with the First DCA.

In this situation, neither Mr. Wood nor Dr. Kurien is seeking reconsideration of our decision to hold this docket in abeyance. Mr. Wood's request for reconsideration states that the directive to file a Motion to Expedite Aloha's appeal with the First DCA is not included in the Order. However, Order No. PSC-02-1722-PCO-WS specifically states, ". . . in an effort to promote the speedy

resolution of the matters contained in the Customers' Petition, we hereby direct our staff to file a Motion to Expedite Aloha's Appeal with the First DCA." Further, upon receiving that directive, on December 9, 2002, our staff filed its Motion to Expedite Aloha's appeal, which was granted by the First DCA on December 13, 2002.

Mr. Wood's and Dr. Kurien's requests for reconsideration accurately state that in the course of discussions at the November 19, 2002 Agenda Conference, OPC accepted the responsibility to undertake and finance an independent audit of Aloha's processing plant and methodology, as requested by the petitioners. Further, the requests for reconsideration accurately describe discussions as to which collegiate body would be best suited to undertake such an audit, as well as discussions as to how OPC would undertake this audit. However, Mr. Wood and Dr. Kurien's requests for reconsideration inaccurately state that this Commission, as a body, agreed that the audit should be undertaken, or that this Commission gave permission to OPC to undertake the audit. In fact, in choosing to hold this docket in abeyance, we specifically stated, ". . . we find that the issues raised in the Customer Petition are inextricably entwined with the Final Order currently on appeal. Further, in the absence of a Commission Motion to relinquish jurisdiction under Rule 9.600(b), Florida Rules of Civil Procedure, our authority to act in the docket is extremely limited."

We agree that the discussions regarding OPC undertaking an independent audit of Aloha's processing plant and methodology referenced in Mr. Wood's and Dr. Kurien's request for reconsideration took place at the November 19, 2002 Agenda Conference. However, we do not agree that we gave permission to OPC to undertake this audit. Nor do we believe that we gave any directive to OPC as to how or by whom the independent audit would be conducted. Thus, we believe that Order No. PSC-02-1722-PCO-WS accurately reflects our determination at our November 19, 2002, Agenda Conference. We further note that nothing in Order No. PSC-02-1722-PCO-WS precludes OPC from continuing to undertake an independent audit of Aloha's processing plant and methodology.

Accordingly, we hereby find that Mr. Wood's and Dr. Kurien's requests for reconsideration shall be denied, as neither states a point of fact or law that this Commission overlooked or failed to consider in rendering our Order, and neither party seeks

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reconsideration of our decision to hold this docket in abeyance, or of our decision to order our staff to file a motion before the First DCA to expedite Aloha's Appeal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Edward O. Wood's Request for Reconsideration of Order No. PSC-02-1722-PCO-WS is denied. It is further

ORDERED that Dr. Abraham Kurien's Request for Reconsideration of Order No. PSC-02-1722-PCO-WS is denied. It is further

ORDERED that this docket shall continue to be held in abeyance pending the outcome of the appeal of our Final Order before the First District Court of Appeal.

By ORDER of the Florida Public Service Commission this 6th day of March, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.